



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

Amy R. Myers, Treasurer
Campaign for Working Families
2800 Shirlington Road
Suite 605
Arlington, VA 22206

DEC 1 0 2003

RE: MUR 5396
Campaign for Working Families
and Amy R. Myers, as treasurer

Dear Ms. Myers:

On November 18, 2003, the Federal Election Commission found that there is reason to believe Campaign for Working Families ("Committee") and you, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

On the same date, the Commission took no further action and dismissed the separate issue of whether the Committee made an excessive contribution to Bauer for President 2000, Inc. in the form of an extension of credit in violation of 2 U.S.C. § 441a(a)(2)(A).

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

1
2 **FEDERAL ELECTION COMMISSION**
3 **999 E Street, N.W.**
4 **Washington, D.C. 20463**
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6 **FACTUAL AND LEGAL ANALYSIS**
7

8 **RESPONDENTS:** Campaign for Working Families PAC **MUR: 5396**
9 and Amy R. Myers, as Treasurer
10

11 **I. INTRODUCTION**

12 This matter was generated based on information ascertained by the Federal Election
13 Commission ("the Commission") in the normal course of carrying out its supervisory
14 responsibilities. See 2 U.S.C. § 437g(a)(2). Campaign for Working Families PAC ("CWF") is a
15 multicandidate political committee, which registered as a political committee with the
16 Commission in November 1996, and qualified for multi-candidate status in August 1997.
17 Amy R. Myers has been CWF's treasurer since June 5, 2000.¹

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. DONOR LIST EXCHANGE -- EXCESSIVE CONTRIBUTION**

20 There is reason to believe that an exchange of donor lists between Bauer for President
21 2000, Inc. (the "Committee") and CWF, a multicandidate political committee associated with
22 Gary L. Bauer, the candidate, resulted in an excessive contribution from CWF to the Committee.
23 As discussed below, there is reason to believe that the list exchange resulted in an excessive
24 contribution because the donor lists or portions of lists exchanged were not of equal value.

25 It appears that the Committee and CWF made an oral agreement in early 1999 to
26 exchange donor lists. The candidate formed CWF in 1996 and was listed on CWF letterhead in
27 2000 as the Chairman of CWF. The candidate is also listed as CWF's chairman on its web site.
28 See http://www.cwfpac.com/chairmans_corner.html. The fact that the list exchange was between

¹ Previously, Peter Dickinson was CWF's treasurer.

the candidate's presidential campaign and his leadership PAC indicates that the exchange was not made at arm's length and is one possible indicator that the lists exchanged were not of equal value.

1. List Exchange Process

Although there does not appear to be a written agreement, the list exchange between CWF and the Committee is delineated in a memorandum dated January 22, 1999 between the President of a Committee direct mail vendor, the Lukens Cook Company, and the treasurer of CWF.² The memorandum states that to "facilitate the exchange process and ensure as few delays as possible" the Committee would receive a complete copy of the CWF donor and non-donor files for use during the exploratory process and any subsequent presidential campaign. In exchange, the Committee was to provide CWF with a complete copy of its donor and non-donor files at the end of the campaign. As discussed below, CWF and the Committee were to pay the cost of providing each other with copies of their donor lists. The CWF names would remain the sole property of CWF and the Committee names would remain the property of the Committee.

According to the memorandum, list exchanges between the Committee and CWF would be coordinated through Pinnacle List Company ("Pinnacle"), a list broker, which would keep an "exchange balance history for both donors and non-donors" including sample copy, mail dates and quantities for each Committee usage of CWF files.³ The memorandum stated that the Committee would submit to Pinnacle a "Request to Mail Form" with proposed copy for each planned mailing. Upon CWF's approval, the Committee would pull "selects" of groups of names

² The memorandum is from Walter Lukens, President of the Lukens Cook Company to Peter Dickinson, former treasurer of CWF. It describes the operation of the list exchange process but does not itself appear to be a written agreement. Thus, the precise terms of the agreement between CWF and the Committee remain unclear and all of the terms may not be reflected in the January 22, 1999 memorandum.

³ An exchange balance history appears to be a running record of the number of names used

1 from its copy of the CWF donor files, directly paying the cost of pulling these names, and
2 provide an "output count" to Pinnacle. Likewise, the memorandum stated that when CWF
3 received and used the Committee's donor lists at the end of the campaign, it would pull its
4 selects from the Committee's files and directly pay the costs of doing so.

5 There appears to be some discrepancy between the language in the memorandum and
6 information provided by Pinnacle concerning the extent of Pinnacle's role in these transactions;
7 however, the Committee appears to have ultimately provided an exchange balance to Pinnacle.
8 Pinnacle stated through its president, Holly Ruble, that it did not have responsibility for or access
9 to list usage communications between CWF and the Committee during the campaign. It stated
10 that it understood that a Committee staff member would track and record list exchanges between
11 the Committee and CWF. Pinnacle explained that it requested the "exchange balance and list
12 usage records" between the Committee and CWF at the end of the Committee's campaign
13 activity in March 2000 in "an effort to confirm and document the list exchange balances now
14 owed" to CWF by the Committee. Pinnacle provided the Commission with a document it
15 received from the Committee listing information about each Committee use of the CWF donor
16 file including the date and quantity and "shared this exchange transaction history with our client,
17 CWF, by way of their list exchange log." Pinnacle asserted that it accepted the Committee's
18 record of these transactions as accurate. Because the exchange balance listed on the document
19 provided by Pinnacle is a total of names used in the separate mailings and is much larger than the
20 total number of names on CWF's donor list, it appears that some CWF names were used multiple
21 times by the Committee.

22 It appears that CWF gave its files to the Committee soon after the agreement was made.
23 CWF stated that on February 1, 1999 it made available to the Committee the "Campaign for

Working Families house list,” containing 87,013 donors and 51,507 non-donors. The exchange balance document provided by Pinnacle lists the first Committee mailing use of the CWF list occurring on February 5, 1999. According to information obtained from the *SRDS Direct Marketing List Source* (December 1998-December 1999), the CWF rents its mailing list for \$115 per 1000 names and the Committee rents its list for \$130 per 1000 names.⁴ It appears that the Committee used CWF’s file 22 times during the period from February 5, 1999 through February 28, 2000, for an aggregate total of 957,338 names, and CWF used the Committee’s donor files 8 times from June 2000 through February 2001, for an aggregate total of 174,501 names.⁵

2. The Value of the Mailing Lists

In Advisory Opinion (“AO”) 2002-14, the Commission allowed a committee to “exchange its mailing lists or portions of its mailing lists... provided that the lists or the portions of the lists that are exchanged are of equal value.” In AO 2002-14 the Commission concluded that the rental or exchange of mailing lists by the Libertarian National Committee (“LNC”) would not result in a contribution if certain conditions were met. The Commission noted that the LNC list was developed by the LNC over a period of time, had a unique nature and did not constitute merely a list purchased from other sources. It further noted that the list was developed primarily for the LNC’s use for its own political or campaign purposes, and not for sale or lease of the names on the list to others. The lease of the LNC list was only a small percentage of its use of the list. The Commission concluded that under these circumstances, the LNC could

⁴ The *SRDS Direct Marketing List Source* refers to cost per 1000 names and does not specifically address the cost for multiple uses of the same name

⁵ Based on the information available, CWF and the Committee did not use all the names in the respective files each time they used the files. Rather, they chose categories of names (selects) from the complete list. Selects are characteristics that identify segments or subgroups within a list (e.g., veterans).

1 exchange its mailing lists or portions of its mailing lists with any organization, including a
2 political committee, provided that the lists or portions of the lists that were exchanged were of
3 equal value without the exchange resulting in a contribution or transfer subject to the Act.

4 As discussed below, there are several ways that the two mailing lists and the exchanges of
5 those lists can be valued. It would appear, however, that there is no apparent valuation under
6 which this transaction can be considered an exchange of donor lists of equal value. Thus, there is
7 reason to believe that the list exchange was an excessive contribution from CWF to the
8 Committee.

9 Preliminarily, a number of factors complicate calculating the value of the mailing lists
10 and make any calculation uncertain and imprecise at best. There is apparently no written
11 agreement delineating the exact terms of the oral list exchange agreement, so it is unclear how
12 the Committee and CWF calculated the value of their lists. Pinnacle's references to exchange
13 balances "owed" need further clarification. In addition, the Committee's list included numerous
14 CWF names, which might have had little value to CWF. However, more recent contact with
15 prospective donors may have made particular donor names more valuable. There is no available
16 evidence that the Committee's use of CWF names added value to them, or to determine the
17 amount of any value added by such use.

18 Also, the comparative value of the mailing lists is uncertain because the list exchange
19 agreement was apparently made when the CWF list existed but before the Committee created its
20 donor list during the campaign. Thus, at the time of the list exchange agreement the value of the
21 Committee's list was purely speculative. The Committee has stated that the list exchange was of
22 equal value, according to accepted industry practice, at the time the exchange agreement was
23 entered into by the parties and that "CWF gave the Committee its existing list for unlimited use

1 during a limited period of time and the Committee promised CWF the list the Committee would
2 develop during the campaign for unlimited use, in perpetuity.” There is no available information
3 concerning accepted industry standards, how CWF and the Committee valued their lists at the
4 time of the exchange agreement, the value of CWF’s use of the Committee’s list in perpetuity, or
5 the parties’ expectations about the number of names that would be generated for the Committee’s
6 list. Additionally, there is no available explanation of why a list balance was maintained by
7 Pinnacle if the expectations of the parties were that the exchanges would be of equal value,
8 regardless of the number of names used by each party. While there may be some value to
9 providing a list in perpetuity, a mailing list’s value may deteriorate over time. Finally, there is no
10 available evidence demonstrating that the Committee provided any names to CWF after May
11 2001.

12 Turning then to the value of the lists, there are several possible ways to determine the
13 difference in value between the CWF and Committee lists and the consequent amount of CWF’s
14 in-kind contribution to the Committee. The list value can be based on the disparity in the total
15 number of names used from the two lists: the value of 957,338 CWF names was \$110,094
16 $(957,338/1000 \times \$115)$ and the value of 174,501 Committee names was \$22,685 $(174,501/1000$
17 $\times \$130)$, so the difference and CWF contribution amount would be \$87,409 $(\$110,094 - \$22,685)$.
18 Alternatively, the value of the lists based on a one time use of each would be as follows: the
19 value of the CWF list would be $(138,520/1000 \times \$115) = \$15,929.80$ and the value of the
20 Committee list would be $(83,821^6/1000 \times \$130) = \$10,826.53$, resulting in a difference and

⁶ This figure is included in a subsequent agreement between the Committee and the Lukens Cook Company. However, the Lukens Cook Company and the Committee state the number of Committee names exchanged under that agreement was 113,293, including 25,547 that did not originate with CWF. This figure would result in a value of a one-time use of the entire Committee list of \$14,728.09. This amount is closer in value to a one-time use of the CWF list but still has an unequal value of approximately \$1,200 less than CWF’s list.

1 contribution amount of \$5,103.27 (\$15,929.80 - \$10,826.53). Another possible calculation
2 would be to consider the value of a one-time use of the entire CWF list compared to the value of
3 that portion of the Committee's list that did not include names derived from CWF's list, because
4 CWF had access to its own list. The value of CWF's list would be \$15,929.80 less the value of
5 the non-CWF portion of the Committee's list, $(25,547/1000 \times \$130) = \$3,321.11$, resulting in a
6 difference and contribution amount of \$12,608.69.⁷ Each of these alternative calculations
7 supports the conclusion that the lists or portions of lists exchanged were not of equal value. The
8 primary difference between them is the size of CWF's excessive contribution to the Committee.

9 Therefore there is reason to believe that CWF exchanged its mailing list, or a portion of
10 its mailing list, for a Committee mailing list that was not of equal value. CWF made an
11 excessive in-kind contribution to the Committee in the form of the provision of CWF's donor list
12 at less than the usual and normal charge. 2 U.S.C. §§ 441a(a)(2)(A), 11 C.F.R. § 100.7(a)(1)(iii).
13 Therefore, there is reason to believe that the Campaign for Working Families PAC, and Amy R.
14 Myers, as treasurer, made excessive in-kind contributions to the Committee the Campaign for
15 Working Families PAC in the form of the exchange of mailing lists or portions of mailing lists of
16 unequal value in violation of 2 U.S.C. § 441a(a)(2)(A).

⁷ The Committee reported receipt of a separate \$4,000 contribution from CWF on January 29 1999. Thus, the excessive portion of CWF's contribution under these calculations would be \$1,000 less than the difference in value